

Summary
Water Pollution Control Board
Indiana Government Center North
Conference Room A
Indianapolis, Indiana
Wednesday, May 11, 2011

1. CALL TO ORDER

Chairman Gary Powdrill called the meeting to order at 1:32 p.m. A quorum was present.

Members present: Gary Powdrill; Dennis Wene; Robert Warnock; Mark Legan; Dave Wagner; Brandon Seitz; Pam Fisher; Mike Neyer; Mike Mettler; and, Deborah Albright.

Present for IDEM: Thomas Easterly, Commissioner; Bruno Pigott, Assistant Commissioner, Office of Water Quality (OWQ); Martha Clark Mettler, Deputy Assistant Commissioner, OWQ and Dennis Lasiter, Technical Environmental Specialist, Permits Branch, Office of Land Quality; Andy Tauer, Agricultural Liaison, Office of External Affairs; Nancy King, Chief, Rules Development Branch, Office of Legal Council (OLC); and MaryAnn Stevens, Rulewriter, Rules Development Section, OLC.

2. INTRODUCTION OF BOARD MEMBERS

Chairman Powdrill asked the board members to introduce themselves and their affiliations.

3. APPROVAL OF SUMMARY

Chairman Powdrill called for approval of the February 9, 2011, meeting summary. A motion was made and duly seconded to approve the meeting summary. The board voted unanimously to approve the February 9, 2011, summary without changes.

4. REPORTS

- PCB Levels – Commissioner Easterly made reference to a chart in IDEM’s 25th Anniversary State of the Environmental 2011 report that shows PCBs consumption levels in fish have slowly decreased since the discontinuation of PCBs use. He, however, acknowledged that mercury remains a challenge in the state.
- Antidegradation - Ms. Martha Clark Mettler discussed the overall progress of the antidegradation rulemaking. She elaborated on the following topics: (1) significant number of response to comments; (2) recent fiscal impact analysis submission to Office of Management & Budget; (3) certain rule language changes; (4) different handling of mercury bioaccumulative compound; and, (5) demonstration components. A request from Chairman Powdrill was made for copies of the response to comments. Ms. Mettler agreed to send board members a copy of the antidegradation summary and comments.
- NPDES Pesticides General Permit (PGP) – Ms. Nancy King updated the board on the NPDES PGP rule. She explained how the U.S. Court of Appeals, 6th Circuit’s decision to grant EPA’s request for an extension and along with the legislative bills have determined that Federal Insecticide, Fungicide and Rodenticide (FIFRA) have clarified who governs the application of pesticides. The outcome is expected to show that the Indiana Office of State Chemist has jurisdiction over FIFRA; consequently, IDEM wouldn’t be issuing NPDES permits for pesticide application.
- WQS for Chlorides – Mr. Bruno Pigott reported that IDEM had received a citizen’s petition requesting a new water quality standard for chlorides rulemaking. He noted that IDEM has been previously working on a strategy to revise the current chloride standard rule.

5. CITIZEN’S PETITION FOR RULEMAKING

Chairman Powdrill announced that there would be a discussion on a citizen's petition for a rulemaking concerning the State's Chloride Water Quality Standard.

Ms. King spoke for the agency. She explained to the board the citizen's petition process and what the board's options were.

Chairman Powdrill called for public commenters. There were two commenters: Mr. Gerald McNerney, Attorney, City of Butler, and Mr. Craig Williams, City of Angola.

6. RULE ACTIONS

LSA #10-403 SRF Eligible Permit

Chairman Powdrill opened the public hearing for consideration of final adoption of the SRF Eligible Permit rule. He introduced Exhibit A, proposed rule, into the record.

Ms. MaryAnn Stevens spoke for the agency. She explained how the proposed rule language changed the original rule language to allow a general construction permit to be satisfactory for a water main project that is funded through the state revolving fund.

There were no public commenters so the hearing concluded.

There was no board discussion. Chairman Powdrill entertained a motion for the final adoption of the proposed rule. A motion was made and seconded to final adopt LSA Doc. #10-403 SRF Eligible Permit rule. With a roll call vote, the board voted unanimously for the final adoption of the SRF Eligible Permit rule as presented.

LSA Doc.# 09-615 Confined Feeding Operations (CFO)

Chairman Powdrill opened the public hearing for consideration of preliminary adoption of amendment and new rules at 327 IAC 19 CFO rule. He introduced Exhibit B, draft rule, into the record.

Ms. King spoke for the agency. She discussed the general history of the first notice's rule language prior to explaining how changes have affected this draft rule language. Ms. King said that IDEM thought that this draft rule was an improved second notice from the 2004 first notice subsequent to the comments received. She explained that there are a number of issues that remain to be discussed and resolved. Ms. King further explained that the "propose-to-discharge" provision in the federal rule was struck down on March 15 which added to the complexion of the rule. She indicated that a new emergency provision addressing the limited wintertime spreading would bring additional comments and other issues after the preliminarily adopted rule with a third comment period is published in the Indiana Register.

Chairman Powdrill called on the public commenters:

Ms. Barbara Sha Cox, farmer; Mr. Bowden Quinn, Conservation Program Coordinator for the Sierra Club, Hoosier Chapter; Mr. Richard Miller, Emeritus Professor of Biology, Butler University; Mr. Justin Schneider, Attorney, Indiana Farm Bureau; Mr. Mike Veenhuizen, AG Group; Mr. Brian Schuter, livestock producer; Mr. David Hardin, Pork Producer, Hendricks County; Mr. Jeff Smiley, CAFO farmer; Kristin Whittington, Landmark Enterprises; Todd Janzen, Indiana Professional Dairy Producers; Mr. Scott Harmon, EarthWise Incorp., Fair Oaks Dairy Farm and Bos Dairy Farms; Mr. Dan McNerny, Attorney, Bose, McKinney and Evans; Mr. Tim Maloney, Hoosier Environmental Council; Jeff Hyman, Attorney, Conservation Law Center; and, Julia Vaughn, Project Director, Downstream Project.

Prior to the end of the public hearing, Ms. Pam Fisher was called back to her office.

Chairman Powdrill called for board discussion. The board discussed several topics: (1) the availability of a track-change document, (2) storage capacity and updated design standards, (3) incorporated by reference materials, and (4) a multi-year application of phosphorus.

In addition, Mr. Mark Legan requested that Dr. Brad Joern, Dept. of Agronomy, Purdue University, speak on the multi-year phosphorus application issue. Dr. Brad Joern articulated his expertise on what other states were doing relevant to the multi-year phosphorus application.

Commissioner Easterly asked Ms. King to explain to the board how a third notice is published.

The board discussion ended. Chairman Powdrill entertained a motion to preliminarily adopt the CFO draft rule. Mr. Dave Wagner so moved and Mr. Dennis Wene seconded. With a voice vote, the board unanimously voted to preliminarily adopt the CFO draft rule.

Emergency Rules for Concentrated Animal Feeding Operations (CAFO)

Thereafter, Chairman Powdrill opened the board meeting for consideration of adoption of the CAFO emergency rules under IC 4-22-2-37.1. He announced that, if adopted, the emergency rule would become effective on May 18, 2011, and it would remain in effect for 90 days. He noted that this emergency rule could be extended for two 90-day extensions. He then introduced Exhibit D, proposal emergency rule, into the record.

Ms. King spoke for the agency. She mentioned that the emergency rule continues to allow the state to be in compliance with the existing federal law until the state's CAFO becomes effective. She said that the change in this emergency rule was the removal of rule language "propose-to-discharge." She continued saying that the "propose-to-discharge" is no longer within the federal CAFO rule.

There was no board discussion. Chairman Powdrill entertained a motion to adopt the proposed emergency rule. Mr. Legan so moved and Mr. Wagner seconded. With a roll call vote, the board voted unanimously for the adoption of the proposed CAFO emergency rule.

LSA Doc.# 09-213 Concentrated Animal Feeding Operations (CAFO) NPDES

Chairman Powdrill opened the public hearing for the consideration of preliminary adoption of the CAFO rule. He introduced Exhibit C, draft rule, into the record.

Ms. King spoke for the agency. She recalled that in 2008, the EPA revised the federal rule in response to a court decision that struck down certain provisions resulting in a continuous litigation. She reiterated that the rule language "propose-to-discharge" was struck down on March 15, 2011. Ms. King explained that the removal of the rule language would only affect those CAFO's that actually discharge and so requiring them to obtain and maintain a NPDES permit. She indicated that the agency anticipates some changes in the rule between the preliminary and final adoption of it; however, the draft rule before the board is currently in conformity with the federal rule.

Chairman Powdrill called on public commenters:

Mr. Justin Schneider, Coalition of AG organization; Mr. Todd Janzen, Indiana Professional Dairy Producers; Mr. David Hardin, Pork Producer; Ms. Kristin Whittington, Landmark Enterprises; and Mr. Mike Veenhuizen, President, Livestock Engineering Solutions.

The public hearing ended.

Chairman Powdrill called for board discussion and there was none. He entertained a motion to preliminarily adopt the CAFO draft rule. Mr. Wagner so moved and Mr. Legan seconded. With a voice vote, the board voted unanimously for the preliminary adoption of the CAFO draft rule.

7. OPEN FORUM

There was none.

8. ADJOURNMENT

The next meeting is tentatively scheduled for 1:30 p.m. EDT on Wednesday, June 8, 2011, in Indiana Government Center South Conference Room A. Chairperson Powdrill adjourned the WPCB meeting at 5:25 p.m.

CHAIRPERSON

The summary is derived from Rules Development Branch staff members' notes; however, a court reporter recorded this meeting. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management. To view approved summaries or minutes, you may go online to <http://www.in.gov/idem/4707.htm>